

U.S. Department of Justice  
Immigration and Naturalization Service

## Notice to Appear

### In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A76 595 582

In the Matter of:

Respondent: <u>Michael</u>	<u>Raphael</u>	<u>KAMBUROWSKI</u>	currently residing at:
2001 North Adams Street, #416		VA 22201	(Area code and phone number)
(Number, street, city, state and ZIP code)			

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Australia and a citizen of Australia;
3. You were admitted to the United States at Los Angeles, CA on or about January 23, 1995 as a nonimmigrant B-2 visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed July 22, 1995;
4. You remained in the United States beyond July 22, 1995 without authorization from the Immigration and Naturalization Service;
5. You were employed for wages or other compensation on May 1995 at Americans for Tax Reform, without authorization of the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

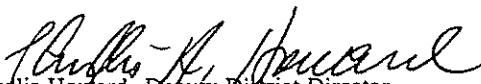
This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 901 N. Stuart Street, #1300, Arlington, VA 22203

on TBA (Date) at TBA (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

(Complete Address of Immigration Court, Including Room Number, if any)

  
Phyllis Howard, Deputy District Director  
(Signature and Title of Issuing Officer)

EPR

Date: December 5, 2000

Arlington, VA  
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99) N

000000036  
Dockets.Justia.com

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

(Signature of Respondent)

Before:

Date: \_\_\_\_\_

(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on 1/30/1 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

in person       by certified mail, return receipt requested       by regular mail

Attached is a credible fear worksheet.

Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the \_\_\_\_\_ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

J. Mizell, District Adjudications Officer

(Signature and Title of Officer)

(Signature of Respondent if Personally Served)

US INS  
4420 NORTH FAIRFAX DRIVE  
ARLINGTON, VIRGINIA 22203

MICHAEL KAMBUROWSKI  
2001 NORTH ADAMS ST, APT. #416  
ARLINGTON, VA 22201

FILE NUMBER: A 76 595 582  
DATE: 04/21/99

Called 3:13 PM

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION:

4420 NORTH FAIRFAX DRIVE, 311  
ARLINGTON, VA 22203

DATE AND TIME:

05/25/99  
3 : 00 PM  
EXAM. "A"

OFFICER:

REASON FOR APPOINTMENT: APPLICATION FOR ADJUSTMENT OF STATUS

THIS INTERVIEW WILL BE VIDEO TAPE.

PLEASE BRING ALL ITEMS THAT ARE CHECKED (X) TO THE INTERVIEW.

THIS LETTER, YOUR PASSPORT, YOUR I-94 (ARRIVAL/DEPARTURE FORM), IF ANY

MEDICAL EXAM RESULTS, FORM I-693. APEAR EVEN IF NOT COMPLETED

A CURRENT LETTER OF EMPLOYMENT

A CURRENT LETTER OF EMPLOYMENT FOR YOU AND/OR YOUR SPOUSE SHOWING RATE OF  
PAY AND HOURS PER WEEK

YOUR SPOUSE

EVIDENCE OF A COMMON RESIDENCE AND SHARED LIFE (INCLUDE PHOTOS)

OTHER: SEE ATTACHED LIST

A CURRENT LETTER OF EMPLOYMENT FOR YOU AND/OR YOUR SPOUSE SHOWING RATE OF PAY  
AND HOURS PER WEEK

NEY NOTIFIED: PAUL SHEARMAN ALLEN

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US INS  
4420 NORTH FAIRFAX DRIVE  
ARLINGTON, VIRGINIA 22203

MICHAEL KAMBUROWSKI  
2001 NORTH ADAMS ST, APT. 416  
ARLINGTON, VA 22201

FILE NUMBER: A 76 595 582  
DATE: 12/02/98

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION: 4420 NORTH FAIRFAX DRIVE, ~~████████~~  
ARLINGTON, VA 22203

DATE AND TIME: 01/04/99  
11 : 00 AM

OFFICER: EXAM. "F"  
EXAMINER VM ROOM 200

REASON FOR APPOINTMENT: APPLICATION FOR ADJUSTMENT OF STATUS

THIS INTERVIEW WILL BE VIDEO TAPE.

PLEASE BRING ALL ITEMS THAT ARE CHECKED (X) TO THE INTERVIEW.

- THIS LETTER, YOUR PASSPORT, YOUR I-94 (ARRIVAL/DEPARTURE FORM), IF ANY
- MEDICAL EXAM RESULTS, FORM I-693. APPEAR EVEN IF NOT COMPLETED
- A CURRENT LETTER OF EMPLOYMENT
- A CURRENT LETTER OF EMPLOYMENT FOR YOU AND/OR YOUR SPOUSE SHOWING RATE OF PAY AND HOURS PER WEEK
- YOUR SPOUSE
- EVIDENCE OF A COMMON RESIDENCE AND SHARED LIFE (INCLUDE PHOTOS)
- OTHER job letter from Terri, marriage register, translation of birth certificate, see also attached list

A CURRENT LETTER OF EMPLOYMENT FOR YOU AND/OR YOUR SPOUSE SHOWING RATE OF PAY AND HOURS PER WEEK

ATTORNEY NOTIFIED: PAUL SHEARMAN ALLEN

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NIXDTVW

NON-IMMIGRANT INFORMATION SYSTEM  
DETAIL VIEW

DATE: 12/05/00

TIME: 9:46:28

LN: KAMBUROWSKI FN: MICHAEL DOB: 05/03/1971 COC: RALIA  
PASSPORT NUMBER : K3236098 GENDER: M COR: RALIA  
ARRIVAL ADMN REC: 1 OF 1  
ADMISSION NUMBER : 70324993900 MISC  
ADMISSION CLASS : B2  
ADMISSION DATE : JAN 23, 1995  
ADMITTED TO DATE : JUL 22, 1995  
PORT OF ENTRY : LOS ANGELES CA  
INSPECTOR NUMBER : 4314  
VISA ISSUE POST : MELBOURNE  
VISA ISSUE DATE : NOV 28, 1994  
ARRIVAL CARRIER : QF QANTAS AIRWAYS, LTD.  
AIRLINE FLIGHT NUMBER : 00011 TRAVEL MODE:  
INTENDED STREET ADDRESS: 3202 N PERSHING DR  
INTENDED CITY ADDRESS : ARLINGTON STATE: VIRGINIA  
MICROFILM NUMBER :  
DEPARTURE ACTUAL DEPARTURE CARRIER :  
DEPARTURE DATE : ACTUAL DEPARTURE FLIGHT #: SCREEN HELP:  
PORT OF DEPARTURE :  
PF1=NEXT PAGE PF2=PRIOR PAGE PF4=RETURN PF5=HELP PF6=MAIN MENU  
PF7=FIRST PAGE PF8=LAST PAGE PF10=INQUIRY  
NI900047 ENTER AN "X" TO VIEW ANOTHER SCREEN

000000040

**START HERE - Please Type or Print**

**Part 1. Information about you.**

Family Name	Given Name Michael		Middle Initial R.
Address - C/O Paul Shearman Allen & Associates			
Street Number and Name	1329 18th Street	N.W.	Apt. #
City	Washington, D.C.		
State	Zip Code 20036		
Date of Birth (month/day/year)	Country of Birth Poland 05/03/71		
Social Security #	A # (if any) None None		
Date of Last Arrival (month/day/year)	I-94# 703249939 00 01-23-95		
Current INS Status	Expires on (month/day/year) 7/22/95 B-2 expired		

**Part 2. Application Type. (check one)**

I am applying for adjustment to permanent resident status because:

- a.  an immigrant petition giving me an immediately available immigrant visa number has been approved (attach a copy of the approval notice), or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application will give me an immediately available visa number if approved.
- b.  My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category which allows derivative status for spouses and children.
- c.  I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e) (attach a copy of the fiance(e) petition approval notice and the marriage certificate).
- d.  I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e.  I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least 1 year.
- f.  I am the husband, wife, or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least 1 year.
- g.  I have continuously resided in the U.S. since before January 1, 1972.
- h.  Other-explain \_\_\_\_\_

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever is later, and: (Check one)

- i.  I am a native citizen of Cuba and meet the description in (e), above.
- j.  I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

**FOR INS USE ONLY**

Returned

FEE RECEIPT

A CENTURY OF SERVICE

Resubmitted

11/25/97 WASHDC

Refpc Sent

\*\*0009\*\*

\*\*0009\*\*

MICHAEL R H

KAMBUROWSKI H

Reloc Rec'd

I-485

I-765

I-130

SUBTL

TTLANT

MNY OR

CHANGE

3 WITONS

4396001 16157

**Section of Law**

Sec. 209(b), INA  
 Sec. 13, Act of 11  
 Sec. 245, INA  
 Sec. 249, INA  
 Sec. 1 Act of 11  
 Sec. 2 Act of 11  
 Other \_\_\_\_\_

**Country Chargeable**

**Eligibility Under Sec. 245**

Approved Visa Petition  
 Dependent of Principal Alien  
 Special Immigrant  
 Other \_\_\_\_\_

**Preference**

**Action Block**

**To Be Completed by Attorney or Representative, If any**

Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

WAS 000108

Part 3. Processing Information.

A. City/Town/Village of birth Your mother's first name	Chelm Urzula	Current occupation Your father's first name	Public Relations/Policy Analy zbigniew
Give your name exactly how it appears on your Arrival /Departure Record (Form I-94) Kamburowski, Michael			
Place of last entry into the U.S. (City/State) Los Angeles, CA		In what status did you last enter? (Visitor, Student, exchange alien, crewman, temporary worker, without inspection, etc.) Visitor	
Were you inspected by a U.S. Immigration Officer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Nonimmigrant Visa Number 373832		Consulate where Visa was issued Melbourne	
Date Visa was issued (month/day/year)	Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	

Have you ever before applied for permanent resident status in the U.S.?  No  Yes (give date and place of filing and final disposition):

B. List your present husband/wife, all of your sons and daughters (if you have none, write "none". If additional space is needed, use separate paper).

Family Name KAMBUROWSKI	Given Name Terri	Middle Initial L	Date of Birth (month/day/year) 05-23-72
Country of birth USA	Relationship Wife	A # None	Applying with you? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place since your 16th birthday. Include any foreign military service in this part. If none, write "none". Include the name of organization, location, dates of membership from and to, and the nature of the organization. If additional space is needed, use separate paper.

None

### Part 3. Processing Information. (Continued)

Please answer the following questions. (If your answer is "Yes" on any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to register for permanent residence or adjust status).

1. Have you ever, in or outside the U.S.:
  - a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested?
  - b. been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?
  - c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action?
  - d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U.S.?

Yes  No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city, or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future?  Yes  No
3. Have you ever:
  - a. within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future?
  - b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling?
  - c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally?
  - d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance?

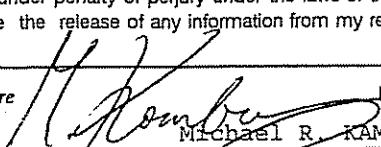
Yes  No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity?  Yes  No
5. Do you intend to engage in the U.S. in:
  - a. espionage?
  - b. any activity a purpose of which is opposition to, or the control or overthrow of, the Government of the United States, by force, violence or other unlawful means?
  - c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information?

Yes  No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party?  Yes  No
7. Did you, during the period March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion?  Yes  No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin, or political opinion?  Yes  No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings?  Yes  No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration Act for use of fraudulent documents, or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S., or any other immigration benefit?  Yes  No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces?  Yes  No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the 2 year foreign residence requirement and not yet complied with that requirement or obtained a waiver?  Yes  No
13. Are you now withholding custody of a U.S. Citizen child outside the U.S. from a person granted custody of the child?  Yes  No
14. Do you plan to practice polygamy in the U.S.?  Yes  No

**Part 4. Signature.** (Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature



Print Your Name

Michael R. KAMBROWSKI

Date

9-22-97

Daytime Phone Number

202-785-0266

*Please Note:* If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

**Part 5. Signature of person preparing form if other than above. (Sign Below)**

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature

Print Your Name

Paul Shearman Allen

Date

9-22-97

Daytime Phone Number

202/638-2777

Firm Name PAUL SHEARMAN ALLEN & ASSOCIATES

and Address 1329 18th Street NW Washington, D.C. 20036

## DO NOT WRITE IN THIS BLOCK - FOR EXAMINING OFFICE ONLY

Case ID#	Action Stamp	Fee Stamp
A#		
G-28 or Volag #		
Section of Law: <input type="checkbox"/> 201 (b) spouse <input type="checkbox"/> 203 (a)(1) <input type="checkbox"/> 201 (b) child <input type="checkbox"/> 203 (a)(2) <input type="checkbox"/> 201 (b) parent <input type="checkbox"/> 203 (a)(4) <input type="checkbox"/> 201 (b) parent <input type="checkbox"/> 203 (a)(5) AM CON: _____	Petition was filed on: _____ (priority date) <input type="checkbox"/> Personal Interview <input type="checkbox"/> Previously Forwarded <input type="checkbox"/> Pet. <input type="checkbox"/> Ben. "A" File Reviewed <input type="checkbox"/> Stateside Criteria <input type="checkbox"/> Field Investigations <input type="checkbox"/> I-485 Simultaneously <input type="checkbox"/> 204 (a)(2)(A) Resolved <input type="checkbox"/> 204 (h) Resolved	
Remarks:		

**A. Relationship**

1. The alien relative is my:      2. Are you related by adoption?      3. Did you gain permanent residence through adoption?

Husband/Wife    Parent    Brother/Sister    Child    Yes       No       Yes       No

**B. Information about you**

1. Name (Family name in CAPS) (First)	(Middle)	
KAMBUROWSKI Terry Lynn		
2. Address (Number and Street)	(Apartment Number)	
2001 North Adams St. # 416		
(Town or City)	(State/Country)	
Arlington VA 22201 USA		
3. Place of Birth (Town or City)	(State/Country)	
Hampton Virginia		
4. Date of Birth	5. Sex	6. Marital Status
(Mo/Day/Yr)	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single  <input checked="" type="checkbox"/> Female <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced	
5-23-72		
7. Other Names Used (including maiden name) SWEAT		
8. Date and Place of Present Marriage (if married) 2-8-97 Alexandria, VA		
9. Social Security Number	10. Alien Registration Number (if any)	
226 23 7903	US citizen	
11. Names of Prior Husbands/Wives	12. Date(s) Marriage(s) Ended	
None	N/A	

## 13. If you are a U.S. citizen, complete the following:

My citizenship was acquired through (check one)

 Birth in the U.S. Naturalization (Give number of certificate, date and place it was issued)

N/A

 Parents

Have you obtained a certificate of citizenship in your own name?

 Yes    No

date and place it was issued

Ident alien, complete the following:  
adjustment to, lawful permanent residencestatus through marriage to a United  
resident?  Yes    No**C. Information about your alien relative**

1. Name (Family name in CAPS) (First)	(Middle)	
KAMBUROWSKI Michael Raphael		
2. Address (Number and Street)	(Apartment Number)	
2001 N. Adams St. # 416		
(Town or City)	(State/Country)	
Arlington Virginia USA 22201		
3. Place of Birth (Town or City)	(State/Country)	
Chelm	Poland	
4. Date of Birth	5. Sex	6. Marital Status
(Mo/Day/Yr)	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Married <input type="checkbox"/> Single  <input type="checkbox"/> Female <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced	
05/03/71		
7. Other Names Used (including maiden name) None		
8. Date and Place of Present Marriage (if married) 02-08-97 Alexandria, Virginia		
9. Social Security Number	10. Alien Registration Number (if any)	
None	None	
11. Names of Prior Husbands/Wives	12. Dates(s) Marriage(s) Ended	
None	N/A	

## 13. Has your relative ever been in the U.S.?

 Yes    No14. If your relative is currently in the U.S., complete the following: He or  
she last arrived as a (visitor, student, stowaway, without inspection, etc.)

Visitor

Arrival/Departure Record (I-94) Number Date arrived (Month/Day/Year)

7 0 3 2 4 9 9 3 9 0 0 0 01-23-95

Date authorized stay expired, or will expire as shown on Form I-94 or I-95

7/22/95

15. Name and address of present employer (if any)  
Americans For Tax Reform, Washington, DC

Date this employment began (Month/Day/Year)

05 - 95

## 16. Has your relative ever been under immigration proceedings?

 Yes    No   Where \_\_\_\_\_ When \_\_\_\_\_ Exclusion    Deportation    Rescission    Judicial Proceedings

INITIAL RECEIPT	RESUBMITTED	RELOCATED	COMPLETED
Rec'd	Sent	Approved	Denied
			Renewed

000000045

**C. (continued) Information about your alien relative**

16. List husband/wife and all children of your relative (if your relative is your husband/wife, list only his/her children).  
 (Name) \_\_\_\_\_ (Relationship) \_\_\_\_\_ (Date of Birth) \_\_\_\_\_ (Country of Birth) \_\_\_\_\_

17. Address in the United States where your relative intends to live  
 (Number and Street) \_\_\_\_\_ (Town or City) \_\_\_\_\_ (State) \_\_\_\_\_  
 2001 North Adams Street # 416, Arlington, VA 22201

18. Your relative's address abroad  
 (Number and Street) \_\_\_\_\_ (Town or City) \_\_\_\_\_ (Province) \_\_\_\_\_ (Country) \_\_\_\_\_ (Phone Number) \_\_\_\_\_  
 14 Grange Court Geelong Victoria Australia

19. If your relative's native alphabet is other than Roman letters, write his/her name and address abroad in the native alphabet:  
 (Name) \_\_\_\_\_ (Number and Street) \_\_\_\_\_ (Town or City) \_\_\_\_\_ (Province) \_\_\_\_\_ (Country) \_\_\_\_\_

N/A

20. If filing for your husband/wife, give last address at which you both lived together: From \_\_\_\_\_ To \_\_\_\_\_  
 (Name) \_\_\_\_\_ (Number and Street) \_\_\_\_\_ (Town or City) \_\_\_\_\_ (Province) \_\_\_\_\_ (Country) \_\_\_\_\_ (Month) \_\_\_\_\_ (Year) \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)  
 2001 North Adams St. # 416, Arlington, VA 22201 Feb. 1997 Present

21. Check the appropriate box below and give the information required for the box you checked:  
 Your relative will apply for a visa abroad at the American Consulate in \_\_\_\_\_ (City) \_\_\_\_\_ (Country)  
 Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at Arlington Virginia (City) \_\_\_\_\_ (State) \_\_\_\_\_ If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American Consulate in Sydney Australia (City) \_\_\_\_\_ (Country)  
 (Designation of a consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that consulate. Acceptance is at the discretion of the designated consulate.)

**D. Other Information**

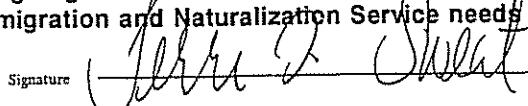
1. If separate petitions are also being submitted for other relatives, give names of each and relationship.  
 None

2. Have you ever filed a petition for this or any other alien before?  Yes  No  
 If "Yes," give name, place and date of filing, and result.

**Warning: The INS investigates claimed relationships and verifies the validity of documents. The INS seeks criminal prosecutions when family relationships are falsified to obtain visas.**

**Penalties:** You may, by law be imprisoned for not more than five years, or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws and you may be fined up to \$10,000 or imprisoned up to five years or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

**Your Certification:** I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit that I am seeking.

Signature  Date 09-22-97 Phone Number 202-785-0266

**Signature of Person Preparing Form if Other than Above**

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name Paul Shearman Allen (Address) \_\_\_\_\_ (Signature) \_\_\_\_\_ Date 9-22-97  
 PAUL SHEARMAN ALLEN & ASSOCIATES  
 1329 18th Street NW  
 Washington, D.C. 20036

G-28 ID Number WAS 000108

Volag Number \_\_\_\_\_

## NOTICE TO PERSONS FILING FOR SPOUSES IF MARRIED LESS THAN TWO YEARS

Pursuant to section 216 of the Immigration and Nationality Act, your alien spouse may be granted conditional permanent resident status in the United States as of the date he or she is admitted or adjusted to conditional status by an officer of the Immigration and Naturalization Service. Both you and your conditional permanent resident spouse are required to file a petition, Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, during the ninety day period immediately before the second anniversary of the date your alien spouse was granted conditional permanent residence.

Otherwise, the rights, privileges, responsibilities and duties which apply to all other permanent residents apply equally to a conditional permanent resident. A conditional permanent resident is not limited to the right to apply for naturalization, to file petitions in behalf of qualifying relatives, or to reside permanently in the United States as an immigrant in accordance with the immigration laws.

**Failure to file Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, will result in termination of permanent residence status and initiation of deportation proceedings.**

**NOTE: You must complete Items 1 through 6 to assure that petition approval is recorded. Do not write in the section below item 6.**

1. Name of relative (Family name in CAPS)	(First)	(Middle)	
KAMBUROWSKI	Michael	Raphael	
2. Other names used by relative (Including maiden name)	None		
3. Country of relative's birth	4. Date of relative's birth (Month/Day/Year)		
Poland	05/03/71		
5. Your name (Last name in CAPS)	(First)	(Middle)	6. Your phone number
KAMBUROWSKI	Terry	Lynn	202-785-0266

Action Stamp

SECTION	DATE PETITION FILED
<input type="checkbox"/> 201 (b)(spouse)	
<input type="checkbox"/> 201 (b)(child)	
<input type="checkbox"/> 201 (b)(parent)	
<input type="checkbox"/> 203 (a)(1)	<input type="checkbox"/> STATESIDE
<input type="checkbox"/> 203 (a)(2)	CRITERIA GRANTED
<input type="checkbox"/> 203 (a)(4)	
<input type="checkbox"/> 203 (a)(5)	SENT TO CONSUL AT:

### CHECKLIST

Have you answered each question?

Have you signed the petition?

Have you enclosed:

- The filing fee for each petition?
- Proof of your citizenship or lawful permanent residence?
- All required supporting documents for each petition?

If you are filing for your husband or wife have you included:

- Your picture?
- His or her picture?
- Your G-325A?
- His or her G-325A?

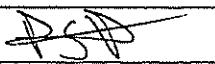
## NOTICE OF ENTRANCE OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: All Immigration Matters	DATE (0-30-97)
	FILE No.

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME Terri Lynn Sweat	<input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Beneficiary	<input type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)		
c/o Paul Shearman Allen & Assoc., 1329 18th St., NW, Washington, DC 20036		
NAME KAMBUROWSKI, Michael R.	<input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Beneficiary	<input type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)		
c/o Paul Shearman Allen & Assoc., 1329 18th St., NW, Washington, DC 20036		

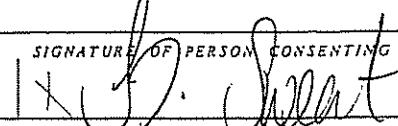
Check Applicable Item(s) below:

<input checked="" type="checkbox"/> 1. I am an attorney and a member in good standing of the Supreme Court of the United States or of the highest court of the following State, territory, Insular possession, or District of Columbia  <u>the State of New York, Pennsylvania</u> (Name of Court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.	
<input type="checkbox"/> 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:	
<input type="checkbox"/> 3. I am associated with _____ the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)	
<input checked="" type="checkbox"/> 4. Others (Explain fully.)  You are advised that in conformity with Public Law 90-83, 5 USC 500(f), 81 Stat 195, you are required to give notice to the undersigned of all notices or other written communication in this case.	
SIGNATURE (X) Paul S. Allen  ( ) Susan Au Allen ( ) Pauline Schwartz	COMPLETE ADDRESS PAUL SHEARMAN ALLEN & ASSOCIATES 1329 18th Street NW Washington, D.C. 20036
NAME (Type or Print) Paul Shearman Allen	TELEPHONE NUMBER 202-638-2777

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: Paul Shearman Allen & Associates, Attorneys at Law (Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

ALL IMMIGRATION MATTERS

NAME OF PERSON CONSENTING Terri Lynn Sweat	SIGNATURE OF PERSON CONSENTING 	DATE 9/29/97
(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)		

## NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: All Immigration Matters	DATE <i>10-30-97</i>
	FILE No.

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME <b>Terri Lynn Sweat</b>	<input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Beneficiary	<input type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)		
<b>c/o Paul Shearman Allen &amp; Assoc., 1329 18th St., NW, Washington, DC 20036</b>		
NAME <b>KAMBUROWSKI, Michael R.</b>	<input checked="" type="checkbox"/> Petitioner <input checked="" type="checkbox"/> Beneficiary	<input type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)		
<b>c/o Paul Shearman Allen &amp; Assoc., 1329 18th St., NW, Washington, DC 20036</b>		

Check Applicable Item(s) below:

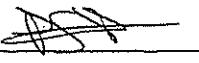
1. I am an attorney and a member in good standing of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia  
the State of New York, Pennsylvania (Name of Court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

3. I am associated with \_\_\_\_\_, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)

4. Others (Explain fully.)

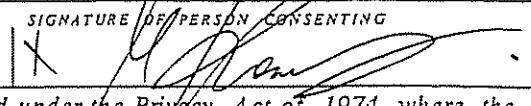
You are advised that in conformity with Public Law 90-83, SURE 500(f), 81 Stat 195, you are required to give notice to the undersigned of all notices or other written communication in this case.

SIGNATURE (X) Paul S. Allen  ( ) Susan Au Allen ( ) Pauline Schwartz	COMPLETE ADDRESS PAUL SHEARMAN ALLEN & ASSOCIATES 1329 18th Street NW Washington, D.C. 20036
NAME (Type or Print) Paul Shearman Allen	TELEPHONE NUMBER 202-638-2777

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: Paul Shearman Allen & Associates, Attorneys at Law (Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

ALL IMMIGRATION MATTERS

NAME OF PERSON CONSENTING Michael R. KAMBUROWSKI		SIGNATURE OF PERSON CONSENTING 	DATE <i>9/26/97</i>
(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)			

(Family name)	(First name)	(Middle name)	<input checked="" type="checkbox"/> MALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	FILE NUMBER		
KAMBUROWSKI Michael Raphael			<input type="checkbox"/> FEMALE	05/03/71	Australian	A-None		
ALL OTHER NAMES USED (including names by previous marriages) None			CITY AND COUNTRY OF BIRTH Chelm Poland			SOCIAL SECURITY NO. (If any)		
FAMILY NAME		FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)			CITY AND COUNTRY OF RESIDENCE		
FATHER Kamburowski Zbigniew		03-11-48	Pola			Geelong, Australia		
MOTHER (Maiden name) Kalabun Ursula		10	1-48 Poland			Geelong, Australia		
HUSBAND (If none, so state) OR WIFE	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTH	TE	COUNTRY OF BIRTH	DATE OF MARRIAGE		
	SWEAT	Terry	5-71	ampion,		Alexandria		
Former HUSBANDS OR WIVES (If none, so state) None		FIRST NAME	BIRTH	E & PLA	OF MARRIAGE	E AND PLA. OF TERMINATION OF MARRIAGE		
APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.						FROM	TO	
STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY			MONTH	YEAR	
2001 N. Adams St. # 416	Arlington	Virginia	USA			02	97	
1300 Rhode Island Ave, N.W.	Wash. D.C.		USA			12	95	
1517 Kingman Place, NW	Wash. D.C.		USA			07	95	
3202 N. Pershing Dr.	Arlington	VA	USA			01	95	
APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OR STREET AND NUMBER						FROM	TO	
14 Grange Court	ree	ng	Victoria	Austr	a	85	01	95
APPLICANT'S EMPLOYMENT LAST FIVE YEARS (If none, so state) LIST P						MONTH	YEAR	
FULL NAME AND ADDRESS OF EMPLOYER						MONTH	YEAR	
Americans for Refor	Was	ington	D.C.	PR/	licy	95		
Show below last occupation abroad if not shown above. (Include all information requested above.)								
Mahlab Group	Marketing			93	94			
THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:				SIGNATURE OF APPLICANT				
<input type="checkbox"/> NATURALIZATION	<input checked="" type="checkbox"/> STATUS AS PERMANENT RESIDENT				DATE 9/23/97			
<input type="checkbox"/> OTHER (SPECIFY):				IF YOUR NATIVE ALPHABET IS OTHER THAN ROMAN LETTERS WRITE YOUR NAME IN YOUR NATIVE ALPHABET IN THIS SPACE				
Are all copies legible? <input checked="" type="checkbox"/> Yes								

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING MATERIAL INFORMATION.

**APPLICANT:** BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
KAMBUROWSKI Michael Raphael		None	



(1) Ident.

000000050

(Family name)	(First name)	(Middle name)	<input type="checkbox"/> MALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	FILE NUMBER	
KAMBUROWSKI Terry Lynn			<input checked="" type="checkbox"/> FEMALE	5-23-72	American	A US citizen	
ALL OTHER NAMES USED (Including names by previous marriages)			CITY AND COUNTRY OF BIRTH			SOCIAL SECURITY NO. (If any)	
SWEAT			Hampton Virginia			226 23 7903	
FAMILY NAME		FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)		CITY AND COUNTRY OF RESIDENCE		
FATHER SWEAT Dennis			Unk Virginia, USA		Woodbridge, VA		
MOTHER (Maiden name) STITH Mary Louise			Unk Virginia, USA		Woodbridge, VA		
HUSBAND (If none, so state) OR WIFE	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE	
KAMBUROWSKI		Michael	05/03/71	Chelm Poland	02-08-97	Alexandria Virginia	
FORMER HUSBANDS OR WIVES (If none, so state)							
FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE		DATE AND PLACE OF TERMINATION OF MARRIAGE		
None							
APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.					FROM	TO	
STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	MONTH	YEAR	MONTH	YEAR
2001 North Adams St. # 416	Arlington	VA 22201	USA	02	97	PRESENT TIME	
1612 Ashford Place	Woodbridge	VA	USA	6	84	2	97
APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR					FROM	TO	
STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	MONTH	YEAR	MONTH	YEAR
N/A							
APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (If none, so state.) LIST PRESENT EMPLOYMENT FIRST					FROM	TO	
FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)			MONTH	YEAR	MONTH	YEAR
American Inns of Court, 127 S. Peyton St. # 201	Program Coordin			10	96	PRESENT TIME	
Apache Medical Systems, 1235 Tysons Blvd. # 300	Sales Support			1	96	10	96
Banana Republic, 640 King Street	Manager			11	94	1	96
Harry Weese Associates, 1200 L'Enfant Plaza	Admin. Assist.			5	92	8	94
OC Incorporated, 1600 Jefferson Davis Highway	Admin. Assist.			11	91	5	92
Show below last occupation abroad if not shown above. (Include all information requested above.)							
N/A	N/A						
THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:	SIGNATURE OF APPLICANT			DATE			
<input type="checkbox"/> NATURALIZATION	<input checked="" type="checkbox"/> STATUS AS PERMANENT RESIDENT			09-23-97			
<input type="checkbox"/> OTHER (SPECIFY):							
Are all copies legible? <input checked="" type="checkbox"/> Yes		IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS WRITE YOUR NAME IN YOUR NATIVE ALPHABET IN THIS SPACE:					

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

**APPLICANT:** BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
KAMBUROWSKI Terry Lynn		US citizen	

COMMONWEALTH OF VIRGINIA  
STATE DEPARTMENT OF HEALTH, RICHMOND



CERTIFICATE OF MARRIAGE

I CERTIFY THAT I JOINED TOGETHER IN MARRIAGE:

MICHAEL RAPHAEL KAMBUROWSKI

, HUSBAND,

TERRI LYNN SWEAT

, WIFE,

ON FEBRUARY 8, 1997 IN ALEXANDRIA

, VIRGINIA, DATED JANUARY 28, 1997

BY AUTHORITY OF A LICENSE ISSUED BY THE CLERK OF THE CIRCUIT COURT OF

ALEXANDRIA

, VIRGINIA, DATED JANUARY 28, 1997

GIVEN UNDER MY HAND ON FEBRUARY 8, 1997

A handwritten signature in black ink, appearing to read "Cullen B. Jones, Jr." followed by a date.

(Signature of Officiant)

CULLEN B. JONES, JR.

APPOINTEE (Title of Officiant)

TO BE DELIVERED BY THE CELEBRANT TO THE PERSONS MARRIED.

VS 38 390

000000052

IMMIGRATION COURT

In the Matter of

KAMBUROWSKI, MICHAEL RAPHAEL  
Respondent

Case No.: A76-595-582

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jul 16, 2004. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

The respondent was ordered removed from the United States to \_\_\_\_\_ or in the alternative \_\_\_\_\_

Respondent's application for voluntary departure was denied and respondent was ordered removed to \_\_\_\_\_ alternative to \_\_\_\_\_

Respondent's application for voluntary departure was granted until \_\_\_\_\_ upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to \_\_\_\_\_

Respondent's application for asylum was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

Respondent's application for a waiver under section \_\_\_\_\_ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other

Respondent's application for adjustment of status under section \_\_\_\_\_ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

Respondent's status was rescinded under section 246.

Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_

As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.

Respondent knowingly filed a frivolous asylum application after proper notice.

Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

Proceedings were terminated without prejudice.

Otherwise, Applicant never received proper notice.

Date: Jul 16, 2004

Appeal waived/received \_\_\_\_\_

STEVEN R. ABRAMS  
Immigration Judge

DCR

CINA

000000053

ALIEN NUMBER: 76-595-582

ALIEN NAME: KAMBUROWSKI, MI

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (CM) OR PERSONAL SERVICE (P)  
TO: EX ALIEN (C) ALIEN C/o Custodial Officer IF ALIEN'S ATT/REP EXISTS  
DATE: 7/16/04 BY: COURT STAFF

Attachments:  EDIR-33  EDIR-28  Legal Services List  Other

000000054

**DI RAIMONDO & MASI, LLP**  
ATTORNEYS AT LAW

401 BROADHOLLOW ROAD, #302  
MELVILLE, NEW YORK 11747  
(631) 777-5557  
(631) 777-5114 FAX

120 BROADWAY, 18TH FLOOR  
NEW YORK, NEW YORK 10271  
(212) 587-0550  
FAX (212) 587-0545

**FEDERAL EXPRESS**

May 20, 2004

Honorable Steven Abrams  
Immigration Judge  
Executive Office for Immigration Review  
Wackenhut Detention Facility  
182-22 150<sup>th</sup> Avenue  
Jamaica, New York 11413

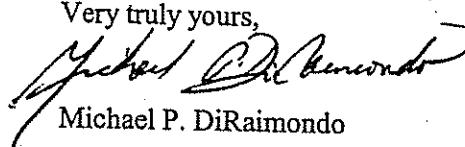
Re: Michael KAMBUROWSKI - A76 595 582

Dear Judge Abrams:

In reference to the above captioned individual, please be advised that the USCIS has not yet adjudicated Mr. Kamburowski's immigrant visa petition. As a result, we respectfully request that Mr. Kamburowski's Master hearing, which is currently scheduled for May 21, 2004, be adjourned for at least thirty (30) days. Assistant Chief Legal Counsel Mr. James Paoli, Esq. has agreed to this request. I am presently available for a telephonic master hearing on the following dates: July 16, July 23, July 30, and August 6, 2004.

We apologize for any inconvenience this may cause the Court. Thank you for your time and consideration.

Very truly yours,

  
Michael P. DiRaimondo

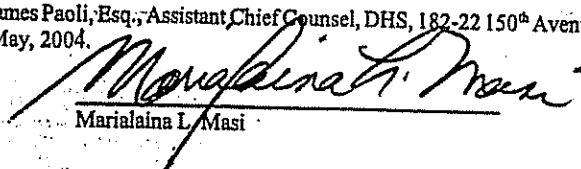
MPD/mlm

cc: James Paoli, Esq.

Michael Kamburowski

**CERTIFICATE OF SERVICE**

I hereby certify that foregoing letter was served on James Paoli, Esq., Assistant Chief Counsel, DHS, 182-22 150<sup>th</sup> Avenue, Jamaica, NY 11413, by First Class Mail, on this 20<sup>th</sup> day of May, 2004.

  
Marialaina L. Masi

000000055

NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

RE: KAMBUROWSKI, MICHAEL RAPHAEL  
FILE: A76-595-582

DATE: May 21, 2004

TO: MICHAEL P. BIRAIMONDO  
401 BROADHOLLOW RD. #302  
MELVILLE, NY 11747

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on 9.30 AM at 182-22 150TH AVENUE JAMAICA, NY 11413

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

YOU MUST BRING PHOTO IDENTIFICATION AND HEARING NOTICE TO ENTER THE BUILDING. Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240(h)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service establishes by clearly unequivocal and convincing evidence that you or your attorney has been provided this notice and that you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE, YOU MUST PROVIDE TO THE IMMIGRATION COURT

THE ATTACHED FORM EDIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE. ON THE ATTACHED FORM EDIR-33, ADDITIONAL FORMS, EDIR-33, CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IF IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EDIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER, BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE AND WILL THEREFORE GO FORWARD IN YOUR ABSENCE. PLEASE LIST YOUR CURRENT ADDRESS ON THE FORM EDIR-33 PROVIDED. THIS INFORMATION IS REQUIRED FOR THE COURT TO SEND YOU A CERTIFIED MAIL COPY OF THE NOTICE OF HEARING. THE CERTIFIED MAIL NUMBER IS FREE. 1-800-229-7180. OR 703-305-1432. THE CERTIFIED MAIL NUMBER IS REQUIRED FOR THE COURT TO FORWARD THE NOTICE OF HEARING TO YOU.

OCR

000000056

NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

RE: KAMBUROWSKI, MICHAEL RAPHAEL  
FILE: A76-595-582

DATE: Apr 9, 2004

TO: MICHAEL P. DIRAIMONDO  
401 BROADHOLLOW RD. #302  
MELVILLE, NY 11747

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on 5/21/04 at 9:30 AM at

182-22 150TH AVENUE  
JAMAICA, NY 11413

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

**YOU MUST BRING PHOTO IDENTIFICATION AND HEARING NOTICE TO ENTER THE BUILDING.**  
Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

- 1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.
- 2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service establishes by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE. ON THE ATTACHED FORM EOIR-33, ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS". CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE ADDRESS PROVIDED AND WILL BE PROVIDED TO YOU AS APPROPRIATE NOTICE TO YOU AND THE ATTORNEY OR REPRESENTATIVE CAN BE FORWARDED IN YOUR PRESENCE. YOU MUST NOTIFY THE COURT OF ANY ADDRESS PROVIDED HAS BEEN GIVEN TO YOU IN WRITING. IN REGARDING THE STATUS OF YOUR CASE, CALL 800-688-7180 OR 708-209-1452.

MM

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DI RAIMONDO & MASI, LLP

ATTORNEYS AT LAW

401 BROADHOLLOW ROAD, #302  
MELVILLE, NEW YORK 11747  
(631) 777-5557  
(631) 777-5114 FAX

120 BROADWAY, 18TH FLOOR  
NEW YORK, NEW YORK 10271  
(212) 587-0550  
FAX (212) 587-0545

**FEDERAL EXPRESS**

April 8, 2004

Honorable Steven Abrams  
Immigration Judge  
Executive Office for Immigration Review  
Wackenhut Detention Facility  
182-22 150<sup>th</sup> Avenue  
Jamaica, New York 11413

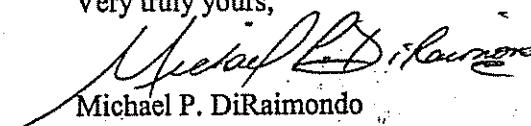
Re: Michael KAMBUROWSKI - A76 595 582

Dear Judge Abrams:

In reference to the above captioned individual, please be advised that Mr. James Paoli, Esq. has recently informed this office that the government has agreed to adjudicate Mr. Kamburowski's Petition for Immediate Relative, Form I-130, administratively. As a result, we respectfully request that Mr. Kamburowski's Master hearing, which is currently scheduled for April 9, 2004, be adjourned.

We apologize for any inconvenience this may cause the Court. Thank you for your time and consideration.

Very truly yours,

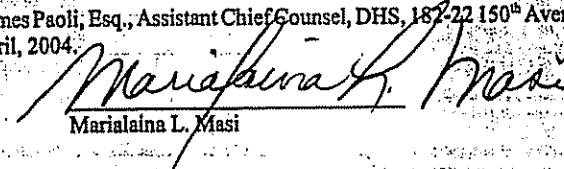
  
Michael P. DiRaimondo

MPD/kag

cc: James Paoli, Esq.  
Michael Kamburowski

**CERTIFICATE OF SERVICE**

I hereby certify that foregoing letter was served on James Paoli, Esq., Assistant Chief Counsel, DHS, 182-22 150<sup>th</sup> Avenue, Jamaica, NY 11413, by First Class Mail, on this 8<sup>th</sup> day of April, 2004.

  
Marialaina L. Masi

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NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

RE: KAMBUROWSKI, MICHAEL RAPHAEL

FILE: A76-595-582

DATE: Mar 26, 2004

TO: MICHAEL P. DIRAIMONDO  
401 BROADHOLLOW RD. #302  
MELVILLE, NY 11747

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on April 9, 2004 at 9:30 A.M. at

182-22 150TH AVENUE  
JAMAICA, NY 11413

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

YOU MUST BRING PHOTO IDENTIFICATION AND HEARING NOTICE TO ENTER THE BUILDING.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240(c)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service establishes by clearly unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT

THE ATTACHED FORM EDIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EDIR-33. ADDITIONAL FORMS EDIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EDIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS" CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUBSTITUTION NOTICE TO YOU AND THE COURT. FORWARD IN YOUR ENVELOPE.

FOR ADDITIONAL INFORMATION, THE ATTACHED FORM EDIR-33, CALL FREE 1-800-677-7180 OR 703-507-1242.

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## LIMITATIONS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your control, will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below), for a period of ten (10) years after the date of entry of the final order of removal.

2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exceptional circumstances beyond your control, will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the date of your scheduled hearing.

3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the date of the scheduled departure. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than \$1000 and not more than \$5000.

The term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

- 1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act.
- 2) Commutation of removal as provided for in section 240A of the Immigration and Nationality Act, and
- 3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language or in a language he/she understands by the Immigration Judge. Date: March 24, 2004

Immigration Judge: \_\_\_\_\_

or Court Clerk: Unyoke

## CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:  MAIL  PERSONAL SERVICE  BY:  ALIEN  ALIEN's CUSTODIAL OFFICER  ALIEN's ATT/REP  BY: COURT STAFF Unyoke DATE: 3/26/04 BY: COURT STAFF Unyoke

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(Publication page references are not available for this document.)

Page 1

U.S. Department of Justice

Executive Office for Immigration Review  
Board of Immigration Appeals

IN RE G-Y-R-, RESPONDENT  
Decided October 19, 2001

(1) When an alien fails to appear at removal proceedings for which notice of the hearing was served by mail, an in absentia order may only be entered where the alien has received, or can be charged with receiving, a Notice to Appear (Form I-862) informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address, pursuant to section 239(a)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1)(F) (Supp. V 1999).

(2) Entry of a n in absentia order of removal is inappropriate where the record reflects that the alien did not receive, or could not be charged with receiving, the Notice to Appear that was served by certified mail at an address obtained from documents filed with the Immigration and Naturalization Service several years earlier.

### Propose

FOR THE IMMIGRATION AND NATURALIZATION SERVICE: Kimberley Joy Shepherd, Assistant District Counsel

BEFORE: Board En Banc: SCIALABBA, Acting Chairman; DUNNE, Vice Chairman; SCHMIDT, HOLMES, HURWITZ, VILLAGELIU, FILPPU, GUENDELSBERGER, MATHON, ROSENBERG, GRANT, MOSCATO, MILLER, BRENNAN, ESPENOZA, OSUNA, and OHLSON, Board Members. Dissenting Opinion: JONES, Board Member, joined by COLE, Board Member. [FN1]

The Immigration and Naturalization Service appeals from the September 30, 1997, decision of the Immigration Judge to terminate proceedings. The appeal will be dismissed.

## I. BACKGROUND

The respondent, a native and citizen of El Salvador, entered the United States without inspection on March 21, 1982, and 2 months later filed a Request for Asylum in the United States (Form I-589) with the Service. [FN2] On June 22, 1991, the respondent submitted an Alien Address Report Card (Form I-104), updating her address with the Service.

On an undisclosed date in 1997, the Service mailed an appointment notice to the respondent for an asylum interview on July 27, 1997. That notice was mailed to the address provided by the respondent in 1991, but we do not know whether she

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actually received it. The respondent did not appear for her scheduled interview.

On July 7, 1997, the Service sent to the respondent, by certified mail to that same address, a Notice to Appear (Form I-862) for a removal hearing scheduled for September 30, 1997. We understand from the Service's brief that the respondent did not receive the Notice to Appear because it was returned to the Service by the Postal Service.

When the respondent did not appear for her hearing, the Service moved to proceed with the hearing in absentia. The Immigration Judge offered to administratively close proceedings to allow the Service time to serve the respondent again, but the Service elected to proceed on the record. Noting the long delay by the Service in acting upon the respondent's asylum application, the Immigration Judge was not satisfied that the respondent was aware of the removal proceedings, "thereby initiating the requirement that she keep the Court and Service informed of an address or bear the consequences for failure to do so." The Immigration Judge terminated proceedings without prejudice. The Immigration Judge's order was thereafter sent by certified mail to the same address as that on the Notice to Appear, and that mailing was returned to the Immigration Court with the annotation "Moved Left No Address."

On appeal, the Service contends that the Immigration Judge should not have terminated proceedings but should have instead ordered the respondent removed in absentia. The Service argues that proper notice of proceedings was effected through "attempted delivery to the last address provided by the alien" pursuant to section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a) (Supp. V 1999). The Service also asserts that section 265 of the Act, 8 U.S.C. § 1305 (1994), places an affirmative duty on the respondent to keep the Attorney General apprised of her whereabouts or face certain consequences under section 266 of the Act, 8 U.S.C. § 1306 (1994 & Supp. V 1999).

The respondent has not replied to the Service's appeal. It appears that she is unaware of these proceedings.

Thus, in this case, we know that the Notice to Appear was not personally served on the respondent but was sent to her by certified mail. We also know that the respondent did not receive the Notice to Appear because the certified mailing was returned. Further, we know that the respondent did not receive any notice of the hearing because the Notice to Appear contained her first and only notice of the date, time, and place of her removal hearing.

## II. ISSUE

The issue is whether an Immigration Judge may order an alien removed in absentia when the Service mails the Notice to Appear to the last address it has for an alien, but the record reflects that the alien did not receive the Notice to Appear and the Notice of Hearing it contains, and therefore has never been notified of the initiation of removal proceedings or the alien's address obligations under section 239(a)(1) of the Act.

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This question can best be answered by a careful reading of the pertinent statutory provisions—specifically, sections 239(a) and (c) and 240(b)(5) of the Act, 8 U.S.C. §§ 1229(a) and (c) and 1229a(b)(5) (Supp. V 1999). We understand these interrelated provisions collectively to preclude the entry of an *in absentia* order of removal when the alien has not received the Notice to Appear and thus does not know of the particular address obligations associated with removal proceedings.

### III. THE NOTICE TO APPEAR

Removal proceedings are initiated when an alien is provided notice of proceedings through the service of a Notice to Appear. Section 239(a)(1) of the Act. The contents of the Notice to Appear are carefully prescribed in section 239(a)(1) of the Act, which provides as follows:

In removal proceedings under section 240, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

- (A) The nature of the proceedings against the alien.
- (B) The legal authority under which the proceedings are conducted.
- (C) The acts or conduct alleged to be in violation of law.
- (D) The charges against the alien and the statutory provisions alleged to have been violated.
- (E) The alien may be represented by counsel and the alien will be provided
  - (i) a period of time to secure counsel under subsection (b)(1) of this section and
  - (ii) a current list of counsel prepared under subsection (b)(2) of this section.

(F) (i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 240(b)(5) of failure to provide address and telephone information pursuant to this subparagraph.

(G) (i) The time and place at which the proceedings will be held.

(ii) The consequences under section 240(b)(5) of the failure, except under exceptional circumstances, to appear at such proceedings. (Emphasis added.)

Thus, as indicated by subparagraph (F)(i), the Notice to Appear apprises the alien that he or she has a particular address obligation respecting removal proceedings: the necessity of providing an address "at which the alien may be contacted respecting proceedings under section 240." As indicated by subparagraph (F)(iii), the Notice to Appear also warns the alien of the potential for an *in absentia* order if the alien fails to provide address information as instructed by the Notice to Appear. (I.e., if the consequences under section 240(b)(5) (the *in absentia* provisions) of failure to provide address and telephone information pursuant to this subparagraph.)

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## B. Means of Service

The alien must be properly served with the Notice to Appear before the particular address obligations of removal proceedings are fixed and the Immigration Judge is authorized to proceed in absentia. In the past, proceedings could be initiated by a notice of proceedings that was personally served on the alien or was sent by certified mail. See section 242B(a)(1) of the Act, 8 U.S.C. § 1252b(a)(1) (1994). In fact, notice was deemed sufficient if the alien could be charged with having received the certified mailing. See *Matter of Grijalva*, 21 I&N Dec. 27, 32 (BIA 1995) (allowing an alien to be charged with receipt when the certified mail receipt has been signed "by the respondent or a responsible person at the respondent's address" (quoting *Matter of Huete*, 20 I&N Dec. 250, 253 (BIA 1991))). The certified mail requirement has been removed, and the statute now simply permits "service by mail" if personal service is "not practicable." Section 239(a)(1) of the Act.

However, if the alien does not actually receive the mailing, as is the case before us, the statute specifies that the sufficiency of service will depend on whether there is "proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)." Section 239(c) of the Act (emphasis added). Thus, in cases where the alien does not get the mailing, only the use of an address that satisfies section 239(a)(1)(F) of the Act will suffice for the initiation of proceedings.

## C. In Absentia Proceedings

If an alien fails to appear after he or she has received a notice of hearing—whether it is the notice of hearing contained in the Notice to Appear or a subsequent hearing notice—the Immigration Judge may proceed in absentia. The specific authorization for doing so is found in section 240(b)(5) of the Act, which provides as follows:

## CONSEQUENCES OF FAILURE TO APPEAR.

(A) IN GENERAL.—Any alien who, after written notice required under paragraph (1) or (2) of section 239(a) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2) of this section). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).

(B) NO NOTICE IF FAILURE TO PROVIDE ADDRESS INFORMATION.—No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 239(a)(1)(F). (Emphasis added.) Thus, in cases where the hearing notice is sent by mail, the entry of an in absentia order is authorized when the alien has been given written notice of the removal hearing "at the most recent address provided under section 239(a)(1)(F)." Section 240(b)(5) of the Act.

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Therefore, the critical question for in absentia cases involving mailed notice is whether the notice is mailed to an address that qualifies as an "address provided under section 239(a)(1)(F)." If an address does not, then the Immigration Judge may not enter an in absentia order of removal because the statutory notice requirement has not been satisfied.

#### IV. A "SECTION 239(a)(1)(F)" ADDRESS

In this instance, the Service sent the respondent's Notice to Appear by certified mail to the most recent address it had on file—an address that she provided on a change of address form in 1991, 6 years before the Service attempted to place her in proceeding s. The Service has offered proof that it attempted to deliver the Notice to Appear to that address.

The question is whether the address used by the Service to mail the Notice to Appear and notice of hearing equates to "the last address provided by the alien in accordance with subsection (a)(1)(F)," as required for the initiation of proceedings under section 239(c) of the Act, or "the most recent address provided under section 239(a)(1)(F)," as required for the entry of an in absentia removal order under section 240(b)(5)(A) of the Act. The sufficiency of notice therefore rests squarely on what constitutes a section 239(a)(1)(F) address.

##### A. Actual Notice and Section 239(a)(1)(F)

Due process requires that the alien be provided with notice of proceedings and an opportunity to be heard. *Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Kaoru Yamataya v. Fisher*, 189 U.S. 86, 101 (1903). It is therefore critical that notice be reasonably calculated to apprise the alien of his or her scheduled hearing and the immigration charges levied by the Service. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

As a general matter, actual notice will always suffice. See, e.g., *Matter of Pence*, 905 F.2d 1107, 1109 (7th Cir. 1990). Consequently, if an alien actually receives a Notice to Appear that is mailed to a section 239(a)(1) address, such as an address from any form filed with the Service, the alien will be put on actual notice of the proceedings, including notice of the obligation to keep the Attorney General informed of any address changes and of the in absentia consequences for failing to do so. Thus, an address taken from an asylum application or a change of address form that accomplishes actual delivery of the Notice to Appear qualifies as a "section 239(a)(1)(F)" address because the alien will actually be informed of the initiation of removal proceedings and the rights and obligations that attach. In the terms of the statute, the alien will "have provided" an address at which he or she can be "contacted respecting proceedings" if any earlier provided address was ineffective for receiving the Notice to Appear and the alien has not provided any written record of an address change. Section 239(a)(1)(F)(i) of the Act.

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## B. Constructive Notice and Section 239(a)(1)(F)

This case, however, does not involve actual notice of proceedings. Rather, it involves constructive notice in the form of undelivered written notice. The sufficiency of constructive notice depends on whether the notice comports with the requirements of the applicable statute and the expectations of due process. See generally *Mullane v. Central Hanover Bank & Trust Co.*, *supra*; *San Augustine County, Tex. v. Cameron County Water Imp. Dist.* No. 10, 202 F.2d 932, 934 (5th Cir. 1953).

The statute allows a hearing to be conducted in absentia, but only when the alien was sent written notice "at the most recent address provided under section 239(a)(1)(F)." Section 240(b)(5)(A) of the Act. The literal language of this provision requires that the address be one provided both by the alien and "under section 239(a)(1)(F)." [FN3] *Id.* As we understand the in absentia provisions in section 240(b)(5)(A), when read in light of section 239(a)(1)(F) itself, the alien cannot provide a "section 239(a)(1)(F)" address (or "have provided" it and therefore not need to change it) unless the alien has been advised to do so.

In this regard, it is section 239(a)(1)(F) itself that requires the Notice to Appear to inform the alien of the particular address obligations associated with removal proceedings. Section 239(a)(1)(F)(i) of the Act. Section 239(a)(1)(F) mandates that the Notice to Appear also inform the alien of the in absentia consequences of failing to comply with those address requirements. Section 239(a)(1)(F)(iii) of the Act. Together, these provisions lead to the conclusion that an address does not become a section 239(a)(1)(F) address unless the alien receives the warnings and advisals contained in the Notice to Appear. This conclusion is reinforced by the parallel language of section 239(c), which permits service by mail when the address used is "provided by the alien in accordance with subsection (a)(1)(F)." Section 239(c) of the Act. Simply put, an alien cannot be expected to provide an address "under" or "in accordance with" section 239(a)(1)(F) until the alien has been informed of the particular address obligations contained in section 239(a)(1)(F) itself.

Accordingly, we find that an address can be a section 239(a)(1)(F) address only if the alien has first been informed of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Because that information is first communicated in the Notice to Appear, the alien must receive the Notice to Appear before he or she can "provide" an address in accordance with section 239(a)(1)(F) of the Act. In cases where the Service uses the mail to deliver the Notice to Appear to the alien, the "last address" or the "most recent address" provided by the alien "in accordance with subsection (a)(1)(F)" will necessarily be an address arising from the alien's receipt of the advisals contained in the Notice to Appear.

Once the advisals in the Notice to Appear are conveyed, serious consequences attach to an in absentia order of removal, and the avenues for relief are extremely limited. See section 240(b)(7) of the Act. Once proceedings have commenced, the alien must attend all scheduled hearings before the Immigration Judge, unless excused by the Immigration Judge. See 8 C.F.R. § 3.25(a) (2001). If the alien fails to appear for a scheduled hearing, the Immigration Judge may

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proceed with the hearing in the alien's absence and order the alien removed in absentia. Accordingly, the statutory notice requirements are precise and require assiduous attention. See *United States v. Perez- Valdera*, 899 F. Supp. 181, 185 (S.D.N.Y. 1995) (noting that Congress strengthened the notice requirements in recognition of the severity of the consequences of an in absentia order). In fact, special allowances are made when an alien has a meritorious challenge to the adequacy of notice. See section 240(b)(5)(C) of the Act (exempting motions to reopen from the 180-day time limit when contesting an in absentia removal order on notice grounds). [FN4]

#### C. Section 239(a)(1)(F) in This Instance

In this instance, the Notice to Appear never reached the respondent, and the advisals were never conveyed. The Service argues that the failure of the Notice to Appear to reach the respondent does not mean the respondent lacked proper notice of proceedings. Rather, the Service maintains that the mailing of the Notice to Appear to the last address provided by the alien satisfies the statutory notice requirements. Moreover, it argues that the alien should be held accountable for the mail not reaching her because she was aware of her address obligations vis-[-/]-vis the Service and, by implication, invited defective notice of proceedings when she failed to keep her address information current.

However, a section 239(a)(1)(F) address is an address where an alien can be "contacted respecting proceedings under section 240." Section 239(a)(1)(F)(i) of the Act. The Notice to Appear concerns the alien's particular address obligations regarding removal proceedings. Unless the respondent is chargeable with having received the Notice to Appear and any notice of hearing contained therein, she has not been placed on notice of proceedings or on notice of the date, time, and location of the removal hearing.

As we read the statute, its intent is to accomplish actual notice. In those instances where actual notice is not accomplished, the statute will permit constructive notice when the alien is aware of the particular address obligations of removal proceedings and then fails to provide an address for receiving notices of hearing. Under the Service's reading of the statute, however, no attempt at actual notice is ever necessary. The alien's address need not be current or even extant; it may even predate the legislative developments that created today's in absentia consequences. In other words, according to the Service, the notice requirements of the Act are satisfied whenever the Service uses the alien's last known address-no matter how old, incomplete, or obviously inadequate that address may be.

We do not agree. Simply mailing the Notice to Appear to an address authorized under section 239(a)(1) does not automatically convert the alien's last known address into a section 239(a)(1)(F) address. While the statute may permit the regular mailing of the Notice to Appear to the last known address, the "(a)(1)" address, so to speak, the statute does not authorize the entry of an "in absentia" order unless the advisals in the Notice to Appear are properly conveyed at which time the address will have become an "(a)(1)(F)" address. In short, the notice requirement leading to an in absentia order cannot be satisfied by mailing the

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Notice to Appear to the last known address of the alien when the alien does not receive the mailing. Again, the "last address" or the "most recent address" provided by the alien "in accordance with" or "under" subsection (a)(1)(F) must be an address consequent to the alien's being put on notice of the particular address obligations contained in the Notice to Appear.

This does not mean, of course, that the alien must personally receive, read, and understand the Notice to Appear for the notice requirements to be satisfied. An alien can, in certain circumstances, be properly charged with receiving notice, even though he or she did not personally see the mailed document. If, for example, the Notice to Appear reaches the correct address but does not reach the alien through some failure in the internal workings of the household, the alien can be charged with receiving proper notice, and proper service will have been effected. See *Matter of Grijalva*, *supra*; *Matter of Huete*, *supra*. However, if we know that the Notice to Appear did not reach the alien and that the alien cannot be properly charged with receiving it, then the mailing address does not qualify as a "section 239(a)(1)(F)" address. In turn, if the mailing address does not qualify as a section 239(a)(1)(F) address, then an in absentia or der predicated on mailed notice to that address may not ensue.

In summary, the Service may either serve the Notice to Appear and its notice of hearing by personal service or by mail. When the Service elects to serve by mail, the statute permits the Notice to Appear to be mailed to the last address the Service has on file for the alien. If the alien actually receives or can be charged with receiving that mailed notice, then the address used by the Service qualifies as a section 239(a)(1)(F) address, and in absentia proceedings are thereafter authorized. If, however, we know that the alien did not receive the Notice to Appear and the notice of hearing it contains, then the alien cannot be on notice of either removal proceedings or the address obligations particular to removal proceedings. In that instance, the address used by the Service cannot qualify as a section 239(a)(1)(F) address, and the entry of an in absentia order is precluded. Thus, we find that when the pertinent provisions are read together, the statute requires that the alien receive (or be charged with receiving) the Notice to Appear containing the notice of hearing before an in absentia order of removal may be entered.

#### V. REGISTRATION

The Service correctly points out that the respondent has an obligation to provide the Service with a current address pursuant to the registration requirements of the Act. Virtually every alien in the United States is under an affirmative obligation to report address changes to the Attorney General, regardless of immigration status or circumstances. Section 265(a) of the Act. All aliens who remain in the United States for more than 30 days have a duty to register with the Attorney General, unless they have been expressly exempted from the requirement. Section 262 of the Act, 8 U.S.C. § 1302 (1994). If registered, the alien has a duty to keep the Attorney General apprised of any address changes. Section 265(a) of the Act. The only aliens who are usually exempt from registration are nonimmigrant representatives of foreign countries and the staff of international organizations. See section 221(b) of the Act, 8 U.S.C. § 1201(b).

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(1994).

The statutory consequences of failing to report an address change as required by section 265(a) include a possible misdemeanor conviction, with a potential fine of up to \$200 and not more than 30 days' imprisonment, and placement into removal proceedings pursuant to chapter 4 of Title 8 of the United States Code. See section 265(b) of the Act. These penalties are not imposed, however, if the alien can demonstrate that the failure to keep his or her address current "was reasonably excusable or was not willful." *Id.*; see also section 237(a)(3)(A) of the Act, 8 U.S.C. § 1227(a)(3)(A) (Supp. V 1999).

Although the failure to comply with section 265 and its surrounding provisions may incur various penalties, the entry of an in absentia order of removal is not one of them. In absentia orders arise from, and are governed by, section 240(b)(5) of the Act. It is that provision, not any of the registration provisions, that contains the requirements and the legal authority for the entry of an in absentia order of removal. We therefore find that the registration provisions do not authorize the issuance of an in absentia order of removal as a consequence of their violation.

#### VI. REGULATORY ADDRESS OBLIGATIONS

Finally, we observe that the regulations are consistent with our reading of the statute.

The regulations at 8 C.F.R. § 3.15 (2001) require that the Notice to Appear provide as follows:

A statement that the alien must advise the Immigration Court having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an in absentia hearing in accordance with § 3.26.

8 C.F.R. § 3.15(b)(7). That regulation also specifies the alien's address obligations to the Immigration Court as follows:

If the alien's address is not provided on the Order to Show Cause or Notice to Appear, or if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. 8 C.F.R. § 3.15(d)(1). In turn, 8 C.F.R. § 3.26 (2001), which pertains to in absentia proceedings, specifically provides that an Immigration Judge may enter an in absentia order in removal proceedings when the following conditions are satisfied:

The Service establishes by clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and written notice of the consequences of failure to appear were provided to the alien or the alien's counsel of record.

8 C.F.R. § 3.26(c)(2). The regulations further provide as follows:

Written notice to the alien shall be considered sufficient for purposes of this

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section if it was provided at the most recent address provided by the alien. If the respondent fails to provide his or her address as required under § 3.15(d), no written notice shall be required for an Immigration Judge to proceed with an in absentia hearing.

We understand the regulations to derive from and to track the language of the statute. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,322 (1997) (noting that the regulations pertaining to section 240 of the Act "follow exactly the requirements of the Act"). We find the regulations to be consistent with the statute and our reading of it. Thus, the regulations, like the Act, do not authorize the entry of an in absentia removal order unless the alien is properly charged with having received notice at an address that qualifies as a section 239(a)(1)(F) address.

#### VI I. CONCLUSION

In this case, the Notice to Appear was mailed to an address that was provided before the respondent was placed in removal proceedings, before she was apprised of the particular address obligations pertaining to removal proceedings, and before she was advised of the charges against her or the in absentia consequences of failing to keep her address information current for removal hearing purposes. The record clearly reflects that the Notice to Appear never reached the respondent. We therefore know that she did not receive the advisals contained therein.

Based on the pertinent statutory provisions, we find that an Immigration Judge may not order an alien removed in absentia when the Service mails the Notice to Appear to the last address it has on file for an alien, but the record reflects that the alien did not receive the Notice to Appear, and the notice of hearing it contains, and therefore has never been notified of the initiation of removal proceedings or the alien's address obligations under section 239(a)(1) of the Act. Because, in this instance, the Service did not establish that the respondent received or can be charged with receiving that notice, the Immigration Judge could not have proceeded in absentia. It was therefore proper for the Immigration Judge to terminate proceedings.

ORDER: The appeal of the Immigration and Naturalization Service is dismissed.

DISSENTING OPINION: Philemina McNeill Jones, Board Member, in which Patricia A. Cole, Board Member, joined

I respectfully dissent.

I find problems in both the majority's interpretation and its implementation of the notice provisions in the Immigration and Nationality Act. For the reasons set forth below, I would sustain the Immigration and Naturalization Service's appeal and remand proceedings to the Immigration Judge for the entry of an in absentia order of removal.

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According to the majority, sections 239(a)(1)(F) and 240(b)(5) of the Act, 8 U.S.C. §§ 1229(a)(1)(F) and 1229a(b)(5) (Supp. V 1999), permit the Service to mail the Notice to Appear (Form I-862) to the alien's last known address. However, that address may be inadequate for the Immigration Judge to proceed with removal proceedings in absentia. I disagree with this reading of the statute.

It is well established that we must "'give effect, if possible, to every clause and word of a statute.'" *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (quoting *Inhabitants of Montclair Township v. Ramsdell*, 107 U.S. 147, 152 (1883)); see also *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 209 (1997) (stating that a statute "must be interpreted, if possible, to give each word some operative effect"); *Market Co. v. Hoffman*, 101 U.S. 112, 115-16 (1879) (opining that, to the degree possible, no clause, sentence, or word in a statute should be construed as superfluous, void, or insignificant). In this instance, the Act provides the following:

In removal proceedings under section 240, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) . . . . Section 239(a)(1) of the Act (emphasis added). Because personal service is not practicable in most cases, the Service is authorized by statute to send the Notice to Appear by regular mail.

If we accept the majority's reading of section 239(a)(1), the use of regular mail is so impractical that it is, in effect, read out of the Act. According to the majority, the Immigration Judge may proceed in absentia only where the record reflects that the alien has actually received the Notice to Appear or can be "charged with" receiving it. However, regular mail can establish neither actual nor constructive notice because, unlike certified mail or other means of mail delivery, it does not generate a signed receipt or other evidence of receipt. Cf. *Matter of Grijalva*, 21 I&N Dec. 27 (BIA 1995). Thus, in the vast majority of cases, the only way in which an Immigration Judge will ever know that the alien received a notice of hearing is if the alien actually appears for the hearing.

Under the majority's reading of the statute, the Service would be ill-advised to rely on the regular mail to initiate proceedings. If the Service uses regular mail, it conveys virtual control over the initiation of proceedings to the alien. To avoid a removal hearing, the alien need only ignore the Notice to Appear when it comes in the mail and, should it ever become necessary, simply deny that it was ever received at his or her address. Alternatively, the alien can simply change his or her residence and/or not report an address change to the Service, knowing that he or she is untraceable for purposes of receiving the Notice to Appear. As the majority has pointed out, few consequences attach for failing to report address changes to the Service and an alien who wishes to delay or even elude proceedings can easily do so. I find it completely incongruous to conclude that Congress intended both to permit and to eviscerate the use of regular mail to initiate removal proceedings.

Moreover, if regular mail is ineffectual, the statutory notice provisions become unwieldy. The majority strains to interpret other provisions that presume regular mail will suffice. In particular, section 239(a)(1)(F) of the Act has a requirement "that the alien must immediately provide (or have provided) the

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Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240."

The majority's reading of this language creates a paradox: how can an alien "have provided" an address to the Immigration Court before he or she has been told to provide one? The only way the alien can provide an address to the Immigration Court prior to proceedings is by providing an address to the Service, with the Service in turn providing it to the Immigration Court via the Notice to Appear. The majority's post facto validation of the address on the Notice to Appear is a forced and impractical reading of the statute, especially when the language of section 239(c) of the Act specifies that attempted delivery by regular mail to the alien's last known address is sufficient notice.

I find that the statute permits—even intends—that removal proceedings be initiated through the mailing of a Notice to Appear by regular mail. Once the Service mails the Notice to Appear to the "most recent address" provided by the alien, under section 239(a)(1)(F) of the Act, an Immigration Judge can order an alien removed in absentia. Section 240(b)(5) of the Act; cf. 8 C.F.R. §§ 3.26(c)(2), (d) (2001). If the last address provided by the alien is inadequate, it is incumbent on the alien to provide a better one or forfeit the right to notice. Section 240(b)(5)(B) of the Act.

If the Service cannot rely on the last address provided by the alien, then the in absentia provisions of the Act are applicable only to those cases in which the alien shows up for the hearing or otherwise concedes receipt of the Notice to Appear. Narrowly applying the in absentia provisions to this class of cases undermines the very efficacy of those provisions. In fact, the majority here places the Service in the untenable position of relying on an address that, almost by definition, is not reliable. In the end, the Service will have no choice but to resort to certified mail, a requirement that Congress purposefully removed from the statute. See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, § 304, 110 Stat. 3009-546, 3009-587.

Ultimately, the majority's decision undermines the enforceability of the Act's in absentia provisions. I find the majority's holding to be at odds with the plain language of the statute and incompatible with any effort to create an effective immigration court system.

Accordingly, I would sustain the Service's appeal.

FN1. Board Members Frederick D. Hess and Roger Pauley did not participate in the decision in this case.

FN2. On appeal, the Service states that the respondent became a class member under American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991), and registered for benefits pursuant to the settlement agreement in that case. We note, too, that the respondent is the beneficiary of a visa petition that was filed by her husband and approved by the Service on December 26, 1990.

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FN3. We look to the precise language of the statute to construe its meaning. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* & i, 467 U.S. 837, 843 (1984). We do not deem it necessary to resort to legislative history, but note nonetheless that the legislative history behind sections 239 and 240 of the Act does not provide meaningful guidance here because the explanatory material simply paraphrases the language that appears in the statute today. See H.R. Conf. Rep. No. 104-828 (1996), available in 1996 WL 563320; H.R. Rep. No. 104-469(I) (1996), available in 1996 WL 168955.

FN4. The dissent identifies potential abuses that could arise under the statute. But the dissent never explains how an address can be an address provided "under" or "in accordance with" section 239(a)(1)(F) of the Act when that address was only given to the Service years in advance of removal proceedings; nor does the dissent attempt to reconcile all of the relevant statutory provisions at issue here.

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